

Request for Interference

The Examiner notes that Applicants have requested interference, yet the application has not been forwarded to the Board. In support of this argument, the Office Action cites Chart II-A of section 804 of the M.P.E.P. as allegedly mandating the application of a statutory double patenting rejection. Although no other statutory rejections are set forth in the Office Action, Chart II-A clearly indicates that in addition to the statutory double patenting rejection, a rejection under 102(e) and a rejection under 102(f) or (g) must also be made. (see, M.P.E.P. § 804).

Accordingly, Applicants renew the Request for Interference set forth in the Response dated October 1, 1998. In addition, Applicants request that an interference be declared between the pending application and U.S. Patent No. 5,849,285 (also referred to as "the '285" patent).

Applicants propose the following Count:

A method of treating an autoimmune disease in a mammal wherein said method comprises transplanting into said mammal a therapeutically effective amount of isolated Sertoli cells to a transplant site in said mammal having said autoimmune disease, wherein said site is other than testes.

The proposed Count corresponds to, at least, claim 1-3 of the '285 patent and claim 50 of the pending application. This request is made within the period set by 35 U.S.C. § 135(b).

Applicants also request that an interference be declared between the pending application and U.S. Patent No. 5,843,430 (also referred to as "the '430 patent").

Applicants propose the following Count:

A compartmentalized kit comprising a first container containing Sertoli cells and a second container containing cells that produce a biological factor that is absent or defective in a disease.

This proposed Count corresponds to, at least, claims 1 and 2 of the '430 patent and claims 47, 48, 51 and 52 of the pending application. This request is also made within the period set by 35 U.S.C. § 135(b).

Double Patenting

Applicants request that the statutory and judicially created double patenting rejections be held in abeyance pending a decision on the Request for Interference. Any double patenting rejections will be obviated pending the outcome of any Interference.

III. CONCLUSION

Applicants have clearly demonstrated the existence of interfering subject matter. Accordingly, pursuant to 37 C.F.R. § 1.607, the Examiner is respectfully requested to declare an Interference.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 398802000321. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

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